STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF THOMAS F. GLENN

Volume II, Pages 284 - 341

http://legacy.library.ucsf.edu/tid/xst05a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/xxxd0001

(The following is the Deposition of THOMAS F. GLENN, taken pursuant to Notice of Taking Deposition, by videotape, at the offices of Dorsey & Whitney, Attorneys at Law, 250 Park Avenue, New York, New York, on September 4, 1997, commencing at approximately 9:04 o'clock a.m.)

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E X A M I N A T I O N I N D E X

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E X H I B I T I N D E X

EXHIBIT	DESCRIPTION	PAGE
1164	Memo, Senkus to Vassallo, Dec. 22, 1971, 50500668-69	288
1165	Letter, Hockett to Homburger, Jun. 3, 1964, CTR Contracts 005740-41	308
1166	Letter, Smith to Ramm, Apr. 29, 1974, 87657602-03	313
1167	Letter, Sommers to Gardner, Nov. 3, 1978, SF0800031	318

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P R O C E E D I N G S

(Witness previously sworn.)

JAMES F. GLENN

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION (Cont'd)

(Plaintiffs' Deposition Exhibit 1164 was marked for identification.)

MR. MERRITT: Before we start, Dr. Glenn would like to correct something in his testimony from yesterday. Do you have a problem if he did that?

THE WITNESS: We discussed the Battelle investigation, smoking dogs. We are familiar with Battelle and indeed Battelle has made proposals to us for research contracts, but this particular study does not appear in our files and I reviewed the annual reports for that entire era relative to respiratory diseases and did not find anything.

I think the thing that misled us about this is the memorandum written by Dr. Wakeham, an internal memorandum in which he ascribes CTR sponsorship to the program when indeed we have no record of such a contract. We also pulled the article relative to this from the Journal of Applied Physiology by Dr. Bair, B-A-I-R, and it ascribes support of this

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project to the U.S. Atomic Energy Commission, so I think the misleading thing was the Wakeham memorandum, which mistakenly referred to this as a CTR project. He in turn may have been misled by the fact that there was a prior memorandum from Dr. Hockett of the CTR staff who analyzed the report of the Battelle study, but nowhere does he indicate that CTR had support of the study, so I think we should simply correct the record on that particular point.

BY MR. O'FALLON:

Q. In any event, it does appear that the Battelle laboratory was able to induce emphysema in dogs by smoking exposure; correct?

A. I'm not sure of that because I didn't read the article in detail. It is largely a technical article dealing with the technology employed in exposing the dogs.

Q. But based on the memorandum that was written that we saw yesterday, it appears that those gentlemen were able to induce emphysema in a dog; correct?

A. I can't attest to that. I saw -- I remember the memorandum but the memorandum is somebody else's interpretation of the work that was done.

Q. And to the best of your knowledge, Philip Morris

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never took out an advertisement or made a public statement that clarified that they had seen evidence that smoke inhalation had induced emphysema in dogs; correct, sir?

A. I'm not aware of any such advertisement.

Q. Yesterday I asked you a question about what level of certainty do you need in order to use cause in the scientific sense and you responded, quote, "Nobody has ever caused cancer in experimental animals by exposure to smoke or tobacco." Correct?

A. To my knowledge.

Q. The fact of the matter is that we have seen certain human diseases induced in animals by inhalation of tobacco smoke; correct?

A. I -- You would have to give me specifics.

Q. Well I think yesterday we looked at the Battelle study and there they had emphysema in dogs that were exposed to cigarette smoke, at least as reported; correct?

MR. MERRITT: I'm going to object to that as mischaracterizing the document.

A. The document that I saw yesterday was someone else's interpretation of what the Battelle study showed.

Q. Yes. It was Philip Morris' interpretation, one

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of their scientist's interpretations; correct?
A. I -- I can't answer that, either, because I don't remember who wrote the memorandum.
MR. O'FALLON: Let's go off the record a second.
A. If you are talking about Dr. Wakeham's memorandum, yes.
MR. O'FALLON: Let's go off the record for a second.
(Discussion off the stenographic record.)
BY MR. O'FALLON:
Q. Again I've asked you to refer to Plaintiffs' Exhibit 435, a document Bates stamp numbered 1001801280 through 1283. Again, this is a 1974 memo from a Carpenter, an R. D. Carpenter to Dr. Tom Osdene; correct?
A. Correct.
Q. Dr. Osdene is one of the chief scientists at Philip Morris; correct?
A. I don't know Dr. Osdene but I'm told that was the case.
Q. And again, this is talking about a study that's ongoing in 1974; correct?
A. Apparently.
Q. The previous memo that we have looked at was a

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1968 memo. Is that your recollection?

A. Yes.

Q. And is the article you are talking about being published by Battelle a 1968 or thereabouts article?

A. Yes.

Q. This looks like a subsequent study; correct?

A. It would be in 1974.

Q. And again this is the dog inhalation test as we talked about yesterday?

A. I believe so, yes.

Q. The dogs here are smoking through masks; right?

A. Yes.

Q. And it said in the second paragraph of the first page, the last -- the second-to-the-last sentence, "Dr. Palmer said they are showing definite signs of emphysema"; correct?

A. Correct.

Q. And again the induction of a human-like disease associated with smoking in an animal model is critical to you as far as causation; correct?

A. Correct.

Q. And in this instance it would appear that we do have the induction of emphysema, a human-like disease --

A. That's not what the document says.

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Q. -- in an animal model; correct?
A. That's not what the document says. It says they are showing definite signs of emphysema; it doesn't say they have emphysema.
Q. The doctor who is conducting the study would probably be the person in the best position to know whether he felt they were showing signs of emphysema; correct?
A. I would agree. Why don't you ask Dr. Palmer?
Q. Let's come back to the whole notion of the Auerbach study. I believe yesterday you were looking at Plaintiffs' Exhibit -- what's the number on the bottom of that? Is that --
A. 1080.
Q. 1080, and that's the memorandum concerning the meeting at CTR between certain research personnel from the tobacco companies, certain members of the CTR staff and certain litigation counsel from the tobacco industry; correct?
A. Correct.
Q. And again this is this whole notion of how you are going to approach or how the industry is going to approach Dr. Auerbach's study; correct?
A. I believe so, yes.
Q. And Auerbach believed that he had induced

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carcinoma in the lung of a dog through the inhalation of tobacco smoke; correct?

A. Dr. Auerbach may have believed that.

Q. Well that would be a direct contradiction to your statement that no one has ever caused cancer in experimental animals by exposure to smoke or tobacco; correct?

A. Well there are many authorities of equal stature to Dr. Auerbach who contested his -- his view. Indeed the Journal of the American Medical Association refused to publish his paper because the histologic evidence of induction of cancer was so scant.

Q. On what do you base that statement, sir?

A. I base that statement on the fact his paper was not published by JAMA but was published in a lesser journal.

Q. What do you base that on? How do you know that? Were you personally or were you one of the people associated with JAMA at that time?

A. No, sir.

Q. You have read that, haven't you?

A. Yes, sir.

Q. Or you have been told that by your attorneys; correct?

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A. I have read that.
Q. In documents, internal documents.
A. I believe so.
Q. Internal documents produced by the same companies that are producing documents we are looking at right now; right, sir?
A. I don't know that.
Q. The fact of the matter is, this gentleman stated and got published results of a study that indicated that lung cancer was induced in an experimental model and so that would be directly contrary to your testimony that nobody has ever caused cancer in experimental animals; correct?
A. It is my view that nobody has ever caused cancer in experimental animals. Dr. Auerbach clearly holds a different view and that is his -- is his right.
Q. Now Dr. Fagan, who was at this meeting, is listed in Deposition Exhibit 1080 as a doctor of veterinary medicine, pathologist and virologist from Philip Morris; correct?
A. Yes, sir.
Q. Let's go back to the document that I showed you yesterday concerning Dr. Fagan's memo to Dr. Wakeham concerning the Auerbach smoking beagles. Do you have that in front of you?

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A. I do.
Q. Let's go to the very last page of that document. Do you see paragraph 8)?
A. I do.
Q. And do you see the last sentence of paragraph 8)?
A. I do.
Q. The last sentence says, "And even if the cancer production is invalidated the obvious emphysema produced cannot be denied"; correct?
A. I see that.
Q. So here is a veterinary pathologist who actually went to Dr. Auerbach's lab and looked at his pathological slides or photomicrographs of his pathological slides who has concluded that Auerbach has induced emphysema through smoke exposure in dogs; correct?
A. That's correct, but it should be -- that should be modified by Dr. Fagan's disclaimer of his expertise in this particular area. He says, "Dr. Auerbach showed me photomicrographs of what looked to my non-expert eye as typical invasive carcinoma," but he discredits himself by saying he is not an expert.
Q. On invasive carcinoma. He doesn't say he is an expert on emphysema, does he, sir?

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A. He doesn't say that.
Q. He may well be and expert on --
MR. MERRITT: Now let the witness finish his answer. You cut him off in mid sentence.
A. He doesn't say he is not an expert in emphysema but I think that for a veterinarian to admit that he has a non-expert eye is certainly a tacit admission that he is not the proper person to be making the evaluation.
Q. Well that may not be true because as a veterinarian he may not have seen a whole lot of lung cancer in dogs since lung cancer -- since dogs don't typically smoke cigarettes; correct?
A. I think you are mixing apples and oranges.
Q. Well one of us is. The fact of the matter is, sir, that this gentleman has only stated that he didn't see that -- well let's be obvious. He says, quote, Dr. Auerbach showed me microphotographs of what looked to my non-expert eye to be typical and invasive carcinoma. When he talks about emphysema, he says it's obvious emphysema. He says, "And even if the cancer production is invalidated the obvious emphysema produced cannot be denied"; correct?
A. I read that.
Q. And this is a gentleman who is a veterinary

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pathologist; correct?
A. Correct.
Q. That would be a gentleman whose job in large part is to look at animal tissues from a pathological perspective; correct?
A. Yes.
Q. Do you know whether Philip Morris ever took out an ad or issued a public statement that said that we have now seen conclusive proof of emphysema being induced through smoke inhalation in an animal?
A. Mr. O'Fallon, I don't work for Philip Morris and never have and I certainly don't have any recollection of their advertising policies or practices.
Q. Did CTR ever take out such a publication?
A. No, sir, not the function of CTR to accomplish public relations or advertising.
MR. MERRITT: Can I interrupt just for a second. The last answer that the witness gave is shown for the -- the witness's answer before as my statement.
(Discussion off the stenographic record.)
BY MR. O'FALLON:
Q. You would agree that the induction of emphysema in an animal that is exposed to tobacco smoke is

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important from a causation point of view to you; correct?

A. Is it important? Yes.

Q. It's a significant finding; correct?

A. It is -- With proper scientific documentation, it is an important finding.

Q. It is a finding the public is entitled to know about; correct?

A. The public is entitled to know and if work has validity it will be published, and of course CTR has always taken the position that all of the research that it has supported should come to publication.

Q. When the TIRC was first formed in 1954 and the tobacco industry pledged that it would bring facts to light that it discovered, it did so by taking out an advertisement in 448 newspapers throughout the country designed to reach every city with a population over 50,000; correct?

A. That's correct.

Q. And to the best of your knowledge, when Dr. Fagan went to Dr. Auerbach's lab and discovered that emphysema had been induced in an animal exposed to cigarette smoke, neither Philip Morris nor TIRC nor TI nor CTR nor any other tobacco manufacturer took out an add in 448 newspapers to let the public know

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of that finding; correct?
A. That's correct, as far as I know it's correct.
Q. I believe you testified yesterday that one of the significance of Dr. Auerbach's work is it should result in additional follow-up work; correct?
A. Correct.
Q. Thus it would be inappropriate for the tobacco industry to use CTR in any way to prevent Dr. Auerbach from obtaining additional funding for his work; correct?
MR. MERRITT: I'm going to object to that question, no foundation, calls for conclusion.
A. I'm not sure of the thrust of the question.
MR. O'FALLON: Why don't we have it read back.
(Record read.)
A. It would be inappropriate for the industry to use CTR. I don't believe the industry has used CTR to prevent Dr. Auerbach from getting funding of his research.
Q. Would you agree it would be inappropriate for CTR to be used in any way by the industry to prevent Dr. Auerbach from getting additional funding for additional inhalation work?
MR. MERRITT: Same objection.

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A. Well I think that your question is based on speculation that such an event occurred and I cannot conceive of such an activity.

MR. O'FALLON: I'm going to move to strike as nonresponsive.

Would you repeat the question?

(Record read.)

A. I think that would be inappropriate and inadvisable but I have no evidence that anything of that sort occurred.

Q. I'm going to hand you a document that's been marked as Plaintiffs' Exhibit 1164. It's Bates stamp number 500500668 through 0669.

This is a document that's titled at the top "Subject: Meeting at Council for Tobacco Research December 21, 1971"; correct?

A. Correct.

Q. The actual date of the memo is December 22nd, 1971; correct?

A. Correct.

Q. This indicates that a meeting was held at the Council for Tobacco Research to discuss further Auerbach's smoking experiments on dogs, under sponsorship of the National Cancer Institute; correct?

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A. Yes.
Q. Background, it says, "The National Cancer Institute, under the direction of Gio B. Gori, is negotiating with Auerbach to conduct further smoking experiment on dogs"; correct?
A. Yes.
Q. As defined by NCI, the objective is to determine the effect of nicotine on smoking dogs; correct?
A. Yes.
Q. And you would agree that's an important issue; correct?
A. Yes.
Q. "Thus, one set of the cigarettes will be smoked on a group of dogs that will produce 2 mg. of nicotine per cigarette; the other set of dogs will be smoked, using low nicotine tobacco, something on the order of .2 mg. of nicotine per cigarette"; correct?
A. Yes.
Q. Then it says, a Scientific Advisory Board of the CTR on it's meeting of December 10th through 12th, 1971 concluded the experiment would be meaningless from a medical standpoint and we should make every effort to convince NCI to abandon the experiment; correct?
A. Correct.

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Q. Doesn't say Dr. Auerbach came to the SAB and asked for approval of funding, does it?
A. No.
Q. NCI is -- is the group that's looking to fund this study; correct?
A. Correct, according to this memo.
Q. And now the CTR is going to be used as an instrument to try to convince a completely separate entity, the National Cancer Institute, not to fund inhalation studies on dogs; correct?
A. This is the implication here regarding the Auerbach study and the basis for the reasoning is explained further in this memorandum.
Q. The fact of the matter is, CTR has never stated publicly that one of its purposes is to prevent research from being funded by other institutions, has it?
A. No, sir, and it has not been our purpose. I think that the Scientific Advisory Board was very critical of the Auerbach study, felt that it was inconclusive and that further studies of that sort would be meaningless, and that is so stated in this memorandum.
Q. But you yourself said you thought further inhalation studies would be useful.

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A. I think they would but not under the circumstances of the Auerbach model.
Q. But they are not saying --
A. Indeed we -- Counselor? We did fund further inhalation studies. I'm sure you're familiar with the Microbiological Associates study.
Q. That's not my question.
The fact of the matter is, CTR is being used here as an instrument by the tobacco industry to shut down Auerbach studies; correct?
A. No, sir.
Q. And a clear implication --
A. I see no implication that CTR is being used. The Scientific Advisory Board made a judgment that the Auerbach study was meaningless, that indeed what he thought he was producing was not cancer, and indeed that the model, the animal model he was using with the tracheostomy was inappropriate and that the findings would be meaningless. And that is -- the Scientific Advisory Board has every right and responsibility to make a recommendation when it has analyzed the data appropriately.
Q. So it's your testimony that CTR has as one of its stated functions the duty to go out and shut down research, especially when that research appears to be

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indicating that cancer is being produced in the lungs of dogs; correct?

A. No, sir, that's not correct and that's not what I said.

Q. Let's look on page 2, "Conclusions Reached at the Meeting": "It was concluded that discussions of the pertinent scientific data with Dr. Gori will convince him that the Auerbach experiments should be abandoned. The staff at CTR will assemble the information that is to be submitted to Dr. Gori. The Research Directors of the tobacco companies will meet with the CTR staff on January 17 to prepare the final report at that time. In a telephone conversation, Dr. Gori has agreed to meet with the Research Directors on January 18 to discuss these data." Correct?

A. Right.

Q. So the research directors of the tobacco companies and the staff of the CTR are together going to put together a package in an attempt to convince an independent scientific agency not to fund further inhalation studies; correct?

A. Not to fund the Auerbach study, counselor. We are talking about one specific animal model that our Scientific Advisory Board thought was inappropriate

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and unsatisfactory for inhalation studies but they were not trying to block further inhalation studies. They were simply stating the case that they did not feel that the Auerbach model was appropriate.

Q. The Auerbach model which had induced cancer in the lungs of animals; correct?

A. Well Dr. Auerbach thought it had induced cancer; other authorities did not believe that.

Q. We spoke yesterday about contract research; correct?

A. Yes.

Q. Dr. Homberger was one of your contract researchers?

A. He was.

Q. Do you think it's appropriate for CTR to tell it's contract researchers to delete phrases such as "microinvasive cancer" and phrases such as "consistent with the carcinoma" from a scientist's work?

A. If indeed they felt it was a misinterpretation, and it's my understanding that that was the feeling at the time.

Q. So when a scientist does contract work for the CTR, the scientist really isn't free to reach his own conclusions. His conclusions have to be agreed with

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by the Scientific Advisory Board of the CTR; correct?
A. No, sir. That's a misinterpretation. Under the terms of the contract, and it varies from one contract to another, the contracting agency has the right to review the results of the contract experiment and -- and the right to make recommendations about publication.
Q. And if the contract researcher has to do that, you would agree that that contract researcher isn't really truly independent; correct?
A. Well it depends on the nature of the contract, and many contracts, the work, the resulting work of the investigator becomes the property of the contracting agency.
Q. So again --
A. That's true not just of CTR but of federal agencies, other granting agencies as well. So this is a perfectly standard practice. In point of fact, Dr. Homberger has been published extensively.
Q. I'm going to move to strike the last comment as nonresponsive.
Of course not every agency takes out an ad in 448 newspapers when it's formed to tell people that and pledge that it's going to only fund independent research; correct?

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A. I -- I don't know how to respond to that. We keep referring to the same advertisement which was the frank statement to smokers. Yes, it was probably appropriate. It's 1954, the evidence that we had at that time was inconclusive about the relationship of smoking and health. In fact, in 1954, Dr. Elmer Hess, the president of the American Medical Association, made the public statement that smoking had no relationship to lung cancer.

MR. O'FALLON: I'm going to move to strike that as nonresponsive.

Q. Here's my question. Not every agency takes out an ad in 448 newspapers when it is formed to tell people and pledge that it's going to only fund independent research; correct?

A. Not every agency, no. Not every agency does that.

(Plaintiffs' Deposition Exhibit 1165 was marked for identification.)

MR. MERRITT: Can Dr. Glenn have a minute to read this before --

MR. O'FALLON: Let me identify it first for the record.

MR. MERRITT: Okay.

BY MR. O'FALLON:

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Q. Plaintiffs' Exhibit 1165 is a document Bates stamp numbered CTR CONTRACTS 005740 to 5741, and it's a letter dated June 3, 1974. Have you seen this document previously?

A. No.

Q. Would you like a minute to review it?

A. Yes.

(Discussion off the stenographic record.)

Very good.

Q. Okay. This is a letter from Robert C. Hockett, Ph.D., the research director of CTR, to Dr. Freddy Homberger; correct?

A. Correct.

Q. And this concerns requests to have changes made in his article, his manuscript before it's published; correct?

A. No. This is a letter that says it is a composite of the suggestions and comments received following review of the paper that Dr. Homberger planned to present at a meeting of the Battelle Seattle symposium.

Q. So you're requesting changes in his manuscript?

A. No, sir. These are -- This is a composite of suggestions and comments as stated in the letter.

Q. Now it says that you consulted, that it has been

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reviewed by staff and consultants; correct?
A. Correct.
Q. Was Ed Jacob a CTR consultant?
A. He was legal counsel.
Q. To who?
A. To CTR.
Q. How about Mr. Ramm?
A. I don't know Mr. Ramm.
Q. Was he legal counsel to CTR?
A. I can't tell you that.
Q. Is it typical for you to have lawyers look at scientific articles?
MR. MERRITT: Object, assumes facts not in evidence. There is nothing in here that says lawyers looked at this.
A. Is it typical for me to have lawyers look at scientific articles?
Q. Absolutely.
A. No.
Q. So why is Mr. Jacob copied on this letter?
A. I have no idea.
Q. Do you understand that Mr. Jacob was with and may still be with the law firm of Jacob Medinger?
A. I believe that's correct.
Q. Do you understand that's one of the law firms

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that has for a long time been a significant force in defending the tobacco industry against claims that cigarette smoking causes cancer in personal injury cases?

A. Mr. O'Fallon, I don't know Mr. Jacob. I've been with CTR for 10 years and he has not been on the scene during that time. I do not know the activities of the Jacob firm in the past.

Q. You have no understanding of that?

A. I know that the Jacob firm was employed as counsel to CTR but that's about as far as my knowledge extends.

Q. Did you know he is also employed as counsel to R.J. Reynolds?

A. No, sir.

Q. Do you know he coordinated certain research activities for R.J. Reynolds?

A. No.

Q. Did you know his law firm ever performed that function?

A. No, and I doubt seriously that they would. They would not have the expertise to do that.

Q. Well then why does he have the expertise to have to be copied on a document that's going to a scientist, in your words making suggestions such as

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changing or deleting words such as microinvasive cancer?

MR. MERRITT: I'm going to object. You are just asking Dr. Glenn to speculate.

Q. Well you would agree, sir, that if you are trying to defend the industry against charges that cigarette smoking causes cancer and one of the researchers for the Council for Tobacco Research is indicating in an article that he has found counsel due to smoke inhalation, that would cause you a fair amount of concern; correct?

A. No. I can't -- I can't accept all those premises because we are talking about a time frame here, 1974, when there was mounting evidence of the risk of smoking with various diseases. But taken in the context and the time frame, I'm not sure that any of these suggestions that were made here were -- were inconsistent with objectivity.

Q. Nor are you sure that they were not inconsistent with objectivity; correct?

A. Well I can't speculate about that but the concluding remark from Dr. Hockett to Dr. Homberger was, "With due consideration of these comments, we find no objection to your publication of this paper in any reputable scientific medium on the usual

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scientific responsibility of the authors."
Q. And you agree that they did suggest that the word "microinvasive cancer" be removed; correct?
A. They made that suggestion because they apparently did not believe that that had been demonstrated.
Q. And they also suggested that the phrase "consistent with carcinoma" be deleted as, quote, non-contributory, end quote; right?
A. That's correct.
Q. You were aware the industry took an activity interest in the projects CTR was funding; correct?
A. I think they take an active interest in all of our activities.
Q. At one point they actually formed a committee headed by chief litigation counsel for Shook Hardy & Bacon to review the work done by CTR; correct?
A. I'm not aware of that.
(Plaintiffs' Deposition Exhibit 1166 was marked for identification.)
BY MR. O'FALLON:
Q. Exhibit 1166 is a document Bates stamped 87657602 to 603, dated April 29, 1974; correct?
A. Yes.
Q. This is to a Mr. H. H. Ramm, the Council for

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Tobacco Research; correct?

A. Correct.

Q. It's from the chairman of R.J. Reynolds Tobacco Company; correct?

A. Yes.

Q. Have you seen this document previously?

A. No, sir.

MR. MERRITT: Can the witness have a minute to look at these?

MR. O'FALLON: Let me just ask one more question. Certainly he can.

Q. You would agree a copy of this document should be in the files of the CTR; correct?

A. I would agree. I don't know whether it is or not.

Q. Would you like a moment to read this?

A. Please.

Thank you.

Q. This document states in this letter to Mr. Ramm that "Agreement has now been reached with each of the major manufacturers as to their representatives who will serve on the Committee to study the research program funded by our industry, both through CTR and independent projects that are brought to us from time to time"; correct?

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A. Correct.
Q. So apparently the industry is going to get together and look at all the research that they are funding; correct?
A. Yes, and I think that's a very appropriate activity. Clearly if the companies are carrying out research independently without any knowledge of what CTR is doing, there could be overlap and redundance. I think it's totally appropriate that the industry come to some agreement about pursuit of research activities.
Q. But you report to the industry quarterly and yearly; correct?
A. Correct.
Q. There is no mystery from the industry's point of view about what work you're reporting; correct?
A. Well we report to them by the annual report and by two meetings of the board of directors of about an hour each, so there clearly is not time or the facility for transmitting a complete review of the total research program. My interpretation of this letter is that they were trying to coordinate the activity, the research activities of the companies and CTR.
Q. But you're supposed to be independent; correct?

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CTR is supposed to be able to do whatever research it wants to do; correct?

A. Not exactly. We are charged with the responsibility of investigating issues of smoking and health, as we discussed yesterday, and I think we have certainly met that responsibility.

Q. Unfettered by pressure from the industry; correct?

A. I don't interpret any pressure here. I see this as an effort to coordinate activities.

Q. So the industry is going to get together and make sure that they are all on the same page about what research they will and won't do; correct?

A. I don't -- I don't see that in the letter. I see here an effort to set up a coordinating committee between the industry and CTR to address those areas of research which would be beneficial to questions involving smoking and health.

Q. And of course it's going to be chaired by an attorney, David Hardy; correct?

A. I understand that from this letter.

Q. And David Hardy is perhaps the chief attorney who has defended the tobacco industry since the 1950s; correct?

A. He may be. As far as I know he is.

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Q. And who is Leonard Zahn?
A. Mr. Zahn was a public relations consultant to CTR.
Q. I didn't think CTR had a public relations function at this point in time.
A. Well Mr. Zahn served not only as a -- as a public relations consultant and issued some memoranda, which I believe we have seen, but he also served as a very capable and competent medical reporter. Mr. Zahn attended many medical meetings, was one of the best lay reporters of medical matters that I've ever observed.
Q. So Leonard Zahn, who runs a public relations firm, is working for the Council for Tobacco Research, who you have testified by this point in time has no public relations function; correct?
A. Well the public relations function that Mr. Zahn subserved for us was participation in preparation of the annual report, distribution of the annual report and press releases regarding the contents of the annual report.
Q. So --
A. This is all in the public domain.
Q. So you still have a public relations person hired --

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A. No.
Q. -- to make -- to look at all of your public relations statements; correct?
A. No. Incorrect.
Q. The fact of the matter is, lawyers do exert control over the research funded by CTR; correct?
A. No, sir.
Q. In fact at one time Dr. Sheldon Sommers suggested that the name of CTR be changed from the Council for Tobacco Research to the Council for Legally Permitted Tobacco Research; correct?
A. Doctor -- You have to know Dr. Charlie Summers. He has an acerbic wit and he was making light of the lawyers with that comment.
Q. Well let's see how light he was in his letter. I'm going to show you and have marked a letter from Dr. Sommers.

(Plaintiffs' Deposition Exhibit 1167 was marked for identification.)

BY MR. O'FALLON:
Q. This is a letter dated November 3, 1978 from Sheldon C. Sommers, M.D. to William U. Gardner, scientific director for the Council for Tobacco Research; correct?
A. Correct.

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Q. This document bears the Bates stamp number SF0800031; correct?

A. Correct.

Q. His first sentence says, "Dear Bill, I have been thinking over about the recent activities of counsel, CTR, over the past ten days"; correct?

A. Yes.

Q. He says, I think -- he says in the last sentence, "I think CTR should be renamed Council for Legally Permitted Tobacco Research, CLIPT for short"; correct?

A. Yes.

Q. When he sends this letter he is being quite serious, isn't he, sir?

A. No. This is a typical Charlie Sommers letter. I have a copy of a letter he wrote a few years later to the president of Harvard University in which he instructs him on the appropriate manner for proceeding with medical education. This is Dr. Sommers wit at work.

Q. Okay. Let's look at the last paragraph of this letter. He said, "Remember when condensate fraction research was prescribed, we lost Dr. Craighead"?

A. Yes.

Q. So what he is saying is, the last time that CTR

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decided to discontinue research such as the condensate fraction research, you lost one of your members; correct?

MR. MERRITT: Well I'm going to object to that as a mischaracterization of the sentence.

A. I'm not sure what the circumstances here were and I can't respond to that.

Q. He then goes on to state, "My considered opinion is that the time for me to sever connections with CTR is near"; correct?

A. Yes.

Q. This is certainly a letter that CTR would have taken seriously when one of their members, a man who would later become a director, threatens to leave; correct?

A. I don't think that's a threat. I think this is typical of Dr. Sommers. He is widely known for his expressions of displeasure, dissatisfaction in a very humorous way and I read this as a typical Sommers letter. Witness to the fact he is not serious is the fact he stayed on the Scientific Advisory Board, became the scientific director of CTR. He is just making a point that CTR and its SAB should be independent of legal counsel and that has been our posture, and I can assure you during my 10-year

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tenure with CTR, attorneys have in no way influenced the activities of that organization.

Q. Well that brings me to his next topic, because we have some 850 documents that are being claimed by CTR as privileged documents, including documents regarding special projects. Is it your testimony that the lawyers have not influenced the special projects research?

MR. MERRITT: I'm going to object to the form of the question since I don't know what the long beginning phrase has to do with the question. Is your question -- Let me have the question restated, please.

MR. O'FALLON: You can read it back.

(Record read.)

MR. MERRITT: Well I'll object to the form of the question. I don't know what you mean.

You can answer it if you can understand it.

A. My knowledge of special projects is very limited. It is my understanding that the special projects were initiated at the request of the sponsor companies and I think that the lawyers may have participated in this. Some of the research was directed toward evaluation of environmental smoke, evaluation of air-handling abilities in buildings,

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because of the interest of the industry in those environmental factors. I cannot say that the lawyers did not participate in the decisions about which special projects to be funded.

Q. Is it typical for you to seek counsel from lawyers before giving your input on a special project?

A. We have no special projects. I have not approved any special projects.

Q. Sir, I saw your name appear on entries from 1988 in which a special project was identified and your comments were indicated, I believe, as redacted. Is that not consistent? Did you not participate in special projects from 1987 to 1990?

MR. MERRITT: I'm going to object to the question. If you have got a document that you want to examine him about you should show him the document.

MR. O'FALLON: Well I'm asking --

MR. MERRITT: You are describing some document that may or may not exist and asking him to premise his answer on the existence of something that may or may not exist.

BY MR. O'FALLON:

Q. Did you or did you not have some activity in

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special projects from 1987 to 1990?
A. I believe it was 1988 a renewal of a special project came across my desk. At that time I was unaware of the -- of the nature of the special project and made inquiries about it and it became apparent that special projects were being phased out, and I think that was appropriate activity.
Q. And did you seek legal advice in order to make comments on that special project?
A. Not to my knowledge, not to my recollection.
Q. And you would agree that CTR has no objection to making all of its documents concerning special projects publicly available; correct?
A. I -- You're asking me a legal question and I don't know the answer to that. If the special projects files are in the hands of our attorneys and they deem them to be privileged documents, then I would have to conform to that opinion.
Q. Was it the -- excuse me.
Was it the attorneys for the companies or CTR's own attorneys who would have had input into special projects?
A. It would have been I think the attorneys for the companies who would have -- would have consulted with the sponsor companies in the special projects that

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they wished to pursue.
Q. So they wouldn't have been rendering legal advice to CTR; correct?
A. Well I can't answer that because I wasn't there but I wouldn't think so.
Q. And you certainly wouldn't go to attorneys for opinions on medical issues or scientific issues; correct?
A. Correct, and I've stated that before.
Q. Okay. So to the best of your knowledge, during your tenure, you have never sought medical or scientific input from lawyers on CTR grants or projects; correct?
A. No. And in that interval of time, lawyers have not consulted me for legal opinions, either.
Q. Similarly, having the name of an attorney such as Ed Jacob on the document we just looked at clearly wouldn't make that privilege because apparently you weren't seeking any legal advice from Mr. Jacob. You were just copying him on medical issues; correct?
MR. MERRITT: Well the record should reflect that Dr. Glenn wasn't even at CTR when that particular letter was written so he wasn't copying anybody.
MR. O'FALLON: Okay. Sir, let the record

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also reflect that Dr. Glenn has been identified here today under Rule 30.02 (f) as the representative of CTR and, presumably, as the representative of CTR, he is here and prepared to testify concerning historical matters of CTR since that's one of the things we noticed; right?

MR. MERRITT: I not saying he can't testify. I'm saying you have to ask an accurate question. You are asking you, meaning him, Dr. Glenn.

MR. O'FALLON: I'm asking him as a representative of CTR. Okay. Let's make that clear.

MR. MERRITT: Why don't you rephrase your question.

MR. O'FALLON: I'm going to repeat it. Why don't we have it read back.

(Record read.)

MR. O'FALLON: And when I ask that question, when I mean "you" I mean CTR and I'm asking you that in your function here today as a represent testify of CTR.

MR. MERRITT: I'm going to object. It's asking him to speculate about what Dr. Gardner, or Dr. Hockett, whoever it was that wrote this letter, intended by copying Ed Jacob. He has no way of

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knowing what the author of that letter's intent was.
A. I really don't know. I was not there and I have no idea.
Q. But it's your understanding that historically CTR did not -- that lawyers did not direct CTR research. That's your testimony?
A. Yes, sir.
Q. And as the director for CTR, do you have any problem with making all special projects documents that are on the privileged log available to my clients, the state of Minnesota and Blue Cross-Blue Shield?
MR. MERRITT: I'm going to object to that. You are asking him to waive the privilege. That's not something he should be forced to do without consultation with counsel. Most of the special projects documents, all except a tiny handful which are clearly privileged, have been produced. It's not like there is any significant quantity of special projects documents we are withholding. Certainly all of the documents that reflect the scientific conclusions or findings of the special projects researchers have been produced. What is being withheld is simply communications between clients and their attorneys or between attorneys cooperating in

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defense of litigation.

MR. O'FALLON: I think I'm entitled to an answer from Dr. Glenn. If you would like to consult with your client before he gives his answer, feel free.

A. I think my attorney has stated our position very clearly. If in their legal opinion certain documents are privileged, I would certainly support that.

Q. Are you aware of the level of funding that has been provided to CTR by the tobacco industry as compared to the amount of money the tobacco industry has spent in the last 40 years on advertising?

A. No, sir.

Q. Would it surprise you that the level of funding given to the CTR is a minuscule amount compared to the amount the industry has spent advertising their products in the last 40 years?

MR. MERRITT: Object to the form.

A. Well I don't know the magnitude of minuscule but I can tell you that we have received some $300 million for support of basic bilogical research. This year, this past year our funding for basic research was $20 million, which was a boon to the biomedical research community.

Q. Excuse me. Can we -- Doctor, excuse my

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reaching. I probably just went on camera. I'm sorry about that.

I'd like to show you a document that's been previously marked as Plaintiffs' Exhibit 602. This is a document that's entitled "Amended Expert Analysis of Advertising, R&D and Youth Prevention Expense By Paul J. Much, July of 1997." Have you ever seen this document?

A. No, sir.

Q. I would like you to look, and again this document is not Bates stamped so -- and mine is tabbed, so actually why don't you hand me your document real quickly and I can get you to the place a whole lot easier, I think.

MR. MERRITT: Do you want him to use --

MR. O'FALLON: Well this is the marked one and I think we better stick with the marked one.

Sorry about that, doctor.

BY MR. O'FALLON:

Q. I've pointed you to the page that states at the top, it's called "ADVERTISING R&D AND YOUTH PREVENTION ($ Actual)," at the top and if you look down it says Philip Morris and then below it R.J. Reynolds and going across the page in a horizontal fashion is a time line starting with the year 1954.

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Do you see that?

A. Yes, sir.

Q. I would just like to you take a look at some of the numbers that are here. Do you see under Philip Morris, under "Research & Development Expenditures" it has contributions to the CTR?

A. Yes.

Q. And the same for R.J. Reynolds?

A. Yes.

Q. Let's look for a second at R.J. Reynolds in 1954. In 1954, according to this document, R.J. Reynolds contributed $387,000 to CTR; correct?

A. Yes.

Q. During that same year, RJR spent $29 million in advertising; correct?

A. Yes. What does that have to do with our mission of supporting basic biomedical research?

Q. You would agree that the amount of money that RJR dedicated to CTR in 1954 is minor compared to the amount of money they dedicated to advertising; correct?

A. Again I think that's apples and oranges. That's $387,000 that would not have been devoted to biomedical research unless R.J. Reynolds had had a successful advertising campaign to sell their

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product.
Q. But again R.J. Reynolds in that same year took out a frank statement advertisement that said that health was its paramount concern; correct?
A. That's what the frank statement says.
Q. As a matter of fact, why don't you hand me the frank statement for a second there.
To be accurate, R.J. Reynolds and the other tobacco companies said, "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business"; correct?
A. Correct. I don't think that is inconsistent with an advertising budget.
Q. Apparently the paramount interest from a dollar point of view in 1954 to R.J. Reynolds is advertising its product; correct?
MR. MERRITT: I'm going to object to the form of the question.
A. No, I don't agree with that.
Q. Let's look in 1965, 10 years later. In 1965, Philip Morris -- strike that -- R.J. Reynolds contributed $618,752 to CTR; correct?
A. Correct.
Q. In the same year, it spent $67 million on

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advertising; correct?

A. Yes. Again, I don't see any relevance there. What they spend for advertising bears no relationship to what they -- what support they have given to biomedical research.

Q. Let's look at 1975.

A. All right.

Q. In 1975, Philip Morris contributed $1,436,332 to CTR; correct?

A. According to this chart.

Q. During the same year, it spent $111 million on advertising; correct?

A. According to this chart.

Q. So it has contributed less than 1 percent of the amount it devotes to advertising to CTR's research and development activities; correct?

A. Well it comes to more than 1 percent but the comparison is -- is just inappropriate. What a company spends to advertise its legal product is unrelated to what it gives to support of basic biomedical research.

Q. Well 1.4 million would be somewhere between 1 to 2 percent of what it spent on advertising; correct, sir?

A. Correct.

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Q. In the same year, 1975, R.J. Reynolds contributed approximately $2 million to the Council for Tobacco Research; correct?

A. Correct.

Q. During the same year it spent $130 million to market its product; correct?

A. Yes. Again I see no -- no relevance of that comparison.

Q. Move to strike the last statement as nonresponsive.

Let's look to the fourth page, where we get to the summary figure, 1954 to 1994. This page would indicate that between 1954 to 1994 Philip Morris contributed $115 million to the Council for Tobacco Research; correct?

A. Correct.

Q. During that same time period it spent $18 billion to market its product; correct?

A. Yes.

Q. The same document would indicate that between 1954 to 1994 R.J. Reynolds contributed $105 million to CTR; correct?

A. Correct.

Q. During the same period, it spent 19 billion to market its products; correct?

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A. Fine.
Q. Finally, doctor, yesterday there was a comment made by your counsel about a justice department investigation, and is CTR currently under investigation by the justice department?
A. I don't know whether we are or not. I on one occasion was interviewed by the attorney for the Eastern District of New York, an informal interview, and I've had no contact from them since.
Q. And that's the only contact you have had to date with the justice department?
A. Yes.
Q. And when I say "you" I mean you and CTR.
A. I believe that one of our former staff members was also contacted by the justice department.
Q. And is that the extent of your knowledge about any justice department investigation?
A. Yes.
Q. Doctor, I'd like to come back finally to the issue of causation. Is it safe to say that you believe there is scientific doubt as to whether smoking causes disease?
A. We have to go back to our definitions of cause. If we accept the term "cause" in the lay sense as the surgeon general has used it and has publicly warned

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the public of the risks of smoking, then I would say that you have to accept cigarettes as a cause of various diseases.

If we use the scientific definition of causation, then we have to say no, smoking has not been proven to be a cause of disease. But common sense tells us that we have known that smoking is a risk factor for various diseases and we have known this for a long time, long before the surgeon general's report of 1964.

I don't think up until that time anyone appreciated the magnitude of risk but as scientific data has unfolded and as the evidence has been brought forth on a scientific basis, it is perfectly clear to the medical community and the scientific community and the lay public that smoking is a significant risk factor for a variety of diseases including lung cancer, cardiovascular disease, coronary artery disease, athrosclerosis, emphysema and others. I think the issue of causation is one that begs definition before discussion.

Q. Is there or is there not scientific doubt about whether cigarette smoking causes cancer?

A. I think there is no doubt if we define cause as risk factor, if we define cause as -- on the

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scientific basis, then you have to say no, we have never demonstrated that smoking is the causative factor. There may be other factors involved in malignant disease, cardiovascular disease, pulmonary disease. We don't know what all those factors are. We are developing a significant database regarding the genetic predisposition, the human genome project is well along now in identifying a variety of genetic abnormalities that predispose to malignant diseases and other diseases and many scientists of high repute believe that there may be a genetic basis for virtually every disease to which we are heir; however, there are a number of environmental factors that can alter the genetic predisposition and smoking may be one of them, one among many.

Q. Doctor, you have given me at least two definitions of causation and a relatively long statement of what you believe that means, and I would have to say, and let me ask you, is it reasonable that a lay person who had just read your statement would be somewhat confused by whether or not you believe smoking causes cancer?

A. I don't think anybody could possibly be confused by what I've just said.

Q. Do you think that it would be reasonable for a

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lay person to interpret your statements as indicating there is some scientific doubt as to whether smoking causes cancer?

A. Let's redefine cause again.

Q. Sir, let's answer my question concerning scientific doubt; okay? You have used the word "scientific" numerous times and I'm asking you as a scientist, do you believe there is scientific doubt as to whether smoking causes cancer?

A. I do not believe there is any scientific doubt that smoking is a significant risk factor in the development of cancer and many other diseases. It is a risk factor that the individual assumes if they choose to smoke. I choose not to for a variety of reasons, one of which is the known risk factor.

Q. When you say a "significant risk factor," would you agree that smoking is a significant contributory factor to the development of cancer and other diseases?

A. I read that as a legal definition rather than a medical question. I think smoking is a significant risk factor for lung cancer, possibly for other cancers as well and for a variety of other diseases.

Q. Is smoking a significant contributory factor to the development of disease in man?

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A. Well again I think you are asking me a legal question and the medical answer to that is, smoking may be a contributing factor, a risk factor for a variety of diseases.

Q. Is it your belief that smoking has been a significant contributory factor to the development of cancer in at least one human being?

A. I don't know, you know, I have not the breadth of knowledge to answer that but I think one has to give credence to the -- to the now clear evidence that smoking is related to lung cancer and possibly other cancers. This is -- this is common knowledge.

Q. You would agree it would be reasonable that if someone picked up the transcript from the hearing before the House of Representatives in 1994 and read your answer to Mr. Wyden's question do you believe that smoking causes cancer, no, sir, to believe that there was some doubt as to whether smoking caused cancer; correct?

A. No, sir, because you are taking that comment out of context. There are pages preceding and following that exchange that make it perfectly clear what we are talking about is causation, and I amplified that I think adequately so that anyone reading this transcript would recognize that I was answering Mr.

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Wyden in the scientific sense.

Q. I showed you a statement from the Minneapolis Star Tribune that indicated that you had testified that there was still doubt as to whether smoking caused cancer. Would you be willing to today write a letter to the Minneapolis Star Tribune and state what you have stated here today that there is now clear evidence that smoking is related to lung cancer and possibly other cancers? Would you be willing to state that as the chairman and CEO and president of the Council for Tobacco Research?

MR. MERRITT: I'm going to object to that question. I think that's an improper question to ask him on the spot whether he is willing to take some official act as -- as the head of an organization without giving him the opportunity to consider it. On the other hand, if -- you may answer the question the best you can?

A. I have made the public statement repeatedly.

Q. You also stated specifically when asked directly do you believe that smoking causes cancer, no, sir; correct?

A. That's correct, but you are taking it out of context. There are pages of testimony prior to and subsequent to that exchange of Mr. Wyden that make it

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perfectly clear I was speaking in a scientific sense.

Q. You also stated during that hearing that you cannot accept the causal relationship; correct?

A. We are back to the same consideration of what you mean by "cause." I've said if you accept cause in the lay sense, then you must know that smoking is a risk factor for a variety of diseases.

Q. Well I think we marked yesterday your transcript and the jury will have it available, and it's your testimony that you define it in the lay term and in the scientific term?

A. Correct.

Q. And it's also your testimony that you said before the congress that in a lay sense you accept that smoking causes disease?

A. I don't know that I made that statement specifically to the congressional committee but I certainly subscribe to that view.

MR. O'FALLON: I have no further questions.

MR. MERRITT: I have nothing.

MR. O'FALLON: Thank you.

MS. IVERSON: Nothing.

THE REPORTER: Off the record.

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(Deposition concluded at approximately 10:08 o'clock a.m.)

C E R T I F I C A T E

I, David A. Campeau, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the foregoing deposition of JAMES F. GLENN at the time and place aforesaid; that the foregoing transcript consisting of pages 284-339 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability; that the noticing party has been charged for the original transcript, and that ordering parties have been charged the same rate for such copies of the transcript.

Dated at Lino Lakes, Minnesota, this 4th day of September, 1997.

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SIGNATURE PAGE

I, JAMES F. GLENN, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 283-339, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

____ Yes, changes were made per the attached (no.) _____ pages.

____ No changes were made.

_____

JAMES F. GLENN

Sworn and subscribed to before me this day of , 199__.

_____

Notary Public

My Commission expires: (DAC)

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